

REMARKS

Upon entry of the foregoing amendment, Claims 1-10 will remain pending in the application. Claims 1 and 4-6 have been amended. The amendment to the independent Claim 1 is supported by the specification at least on page 2, lines 7-9 and 23. These changes do not introduce new matter, and their entry is respectfully requested.

In the Office Action dated April 18, 2008, the Examiner checked both boxes of “non-final” and “final” on the Office Action Summary. Applicants would like to call the Examiner’s attention to the fact that since this is the first Office Action after filing of the present application, the outstanding Office Action is non-final.

Information Disclosure Statement

In the outstanding Office Action, the Examiner requested Applicants to submit a copy of Reference 4 of the IDS submitted May 6, 2005. Accordingly, Applicants are providing a replacement copy for the Examiner’s consideration.

Claim Objection

Claims 4-10 stand objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot serve as the basis for another multiple dependent claim. Claims 4-6 have been amended to cancel the multiple dependency. Applicants respectfully submit that the amendments obviate the grounds of the objection and withdrawal of the objection under 37 CFR 1.75(c) is respectfully requested.

Claim Rejections Under 35 USC § 103

Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Metzger et al. (hereinafter “Metzger”) in view of Freshney and Parce et al. (hereinafter “Parce”) for reasons stated on pages 3-4 of the Office Action. Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

In this case, independent Claim 1, as amended, is directed to a medium for measuring the efficacy of a tumor therapy on single cell suspensions, comprising the essential amino acids, vitamins, salts and carbon donors, characterized in that the medium comprises from 0.1 to 1 mM buffer of pH 7.0 to 7.4, 5 to 20% by volume fetal calf serum, 4 to 6 g/l glucose and 2 to 5 mM glutamine as carbon source, wherein the medium does not contain carbon sources other than glucose and glutamine.

In contrast, Metzger describes the *in vitro* prediction of an *in vivo* cytostatic response of human tumor cells with a fast chemosensitivity assay. Metzger, however, does not mention a culture medium comprising 4 to 6 g/l glucose and 2 to 5 mM glutamine as carbon source, wherein the medium does not contain carbon sources other than glucose and glutamine. Specifically, Metzger describes on pages 99-100, three media for culturing human tumor cells: RPMI1640, Eagle’s MEM and DMEM. According to Freshney, RPMI1640 contains 2 g/l glucose and Eagle’s MEM contains 1 g/l glucose; both are well below the range of 4-6 g/l glucose recited in Claim 1. DMEM contains 4.5 g/l glucose and 110 mg/l pyruvate as carbon

source. The present pending Claim 1, however, recites that “the medium does not contain carbon sources other than glucose and glutamine.”

Freshney and Parce do not cure the deficiency of Metzger. Freshney generally describes the components of commonly used cell culture media. Freshney does not mention a medium for measuring the efficacy of a tumor therapy on single cell suspensions that comprises 4 to 6 g/l glucose and 2 to 5 mM glutamine as carbon source, wherein the medium does not contain carbon sources other than glucose and glutamine. Parce generally describes a method for detecting cell-affecting agents with a silicon biosensor. Parce is cited for its teachings on reducing the buffer capacity of the culture medium to about 1 mM. Parce also fails to teach or suggest a culture medium that comprises 4 to 6 g/l glucose and 2 to 5 mM glutamine as carbon source, wherein the medium does not contain carbon sources other than glucose and glutamine.

Therefore, neither Metzger nor Freshney and Parce mention a culture medium that comprises 4 to 6 g/l glucose and 2 to 5 mM glutamine as carbon source, wherein the medium does not contain carbon sources other than glucose and glutamine. Accordingly, Applicants respectfully submit that Metzger, Freshney and Parce, individually or in combination, do not support a *prime facie* case of obviousness since they do not disclose all the limitations recited in the independent Claim 1. Applicants further submit that Claims 2-3 (as well as Claims 4-10) are patentable over Metzger, Freshney and Parce because they depend from Claim 1 and recite additional patentable subject matter.

In view of the foregoing, Applicants respectfully submit that the grounds for this rejection have been obviated and withdrawal of the 35 U.S.C. 103 rejection is respectfully requested.

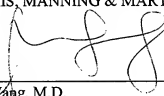
CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to contact Applicants' counsel, Ping Wang, M.D. (Reg. No. 48,328), at 202.842.0217.

Respectfully submitted,

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